APPEAL NO. 030629
FILED APRIL 15, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on February 6, 2003. The hearing officer determined the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 9th quarter, September 13 through December 12, 2002, or the 10th quarter, December 13, 2002, through March 13, 2003.

The claimant appeals and argues that the hearing officer erred by not giving presumptive weight to the opinion of the designated doctor, appointed pursuant to Texas. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.110(a) (Rule 130.110(a)), by finding that no narrative had been provided that specifically explained how the claimant's injury caused a total inability to work; and in finding that Dr. M report showed that the claimant is able to return to work because Dr. M's opinions were illegally obtained. The respondent (carrier) responds and urges affirmance.

DECISION

Affirmed.

Pursuant to Rule 130.110, the presumptive weight afforded the designated doctor's report concerning whether the medical condition of an injured employee has improved sufficiently to allow the injured employee to return to work begins when the report is received by the Texas Workers' Compensation Commission (Commission) and continues until proven otherwise by the great weight of the other medical evidence or until the designated doctor amends his report based on newly provided medical or physical evidence. S*ee also* Texas Workers' Compensation Commission Appeal No. 022604-s, decided November 25, 2002. In Texas Workers' Compensation Commission Appeal No. 002788, decided January 11, 2001, the Appeals Panel held that the hearing officer was correct in not giving presumptive weight to the designated doctor's report because it was not filed with the Commission until after the end of the qualifying period for the quarter in issue. In the instant case, the qualifying period for the 9th quarter began on June 1, 2002, and continued through August 30, 2002. The qualifying period for the 10th quarter began on August 31, 2002, and continued through November 29, 2002. Dr. W, the designated doctor, was not appointed by the Commission until November 30, 2002, one day after the 10th quarter qualifying period ended. His report was received by the Commission local office on December 9, 2002. His report was not entitled to presumptive weight until that date. We therefore affirm the hearing officer's action in analyzing the question of SIBs entitlement according to the criteria set forth in Rule 130.102(d)(4).

The hearing officer did not err in determining that the claimant is not entitled to SIBs for the 9th quarter and the 10th quarter because the claimant had some ability to

work and did not document sufficient job searches during the relevant qualifying periods. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The hearing officer found that the claimant did not provide a narrative from a doctor specifically explaining how the injury caused a total inability to work, and we can conclude that the hearing officer did not believe that the designated doctor's report qualified as a narrative. In addition, the hearing officer noted that the carrier had provided evidence that indicated the claimant had some ability to work during the relevant qualifying periods. Whether or not the claimant supplied a narrative was a question of fact for the hearing officer. The hearing officer's determination that the claimant did not provide a narrative pursuant to Rule 130.102(d)(4), and is therefore not entitled to SIBs for the 9th and 10th quarters, is supported by sufficient evidence and it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 021340, decided June 27, 2002.

The claimant argues for the first time on appeal that Dr. M's opinions were obtained in violation of Rule 126.5(b)(3), in that a functional capacity evaluation (FCE) conducted by Dr. M amounted to a second required medical examination (RME) of the claimant in less than a year. The claimant properly points out in his own brief that this objection should have been made at the CCH. As it was not, the objection was not properly preserved for appeal. We do note that the carrier responded to the claimant's appeal with the assertion that the FCE was requested by the RME doctor, which would make it a part of the RME, and not a separate second examination. As mentioned, there was no proper objection made at the CCH, and the evidence was not developed, so any possible error was waived.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **BANKERS STANDARD INSURANCE COMPANY** and the name and address of its registered agent for service of process is

MARCUS CHARLES MERRITT
6600 CAMPUS CIRCLE DRIVE EAST
IRVING, TEXAS 75063.

_____
Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

_____
Daniel R. Barry
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge